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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,750

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Franklin H. Valade JR.

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IP LEGAL DEPARTMENT
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EXAMINER

MULLEN, THOMAS J

ART UNIT

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2612

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/612,750	Applicant(s) VALADE ET AL.	
	Examiner /Thomas J. Mullen/	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 49-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☒ Claim(s) 38-48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The amendment and RCE filed 10/2/07 have been fully considered.
2. Claims 49-52 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/18/05.
3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings filed 7/2/03 fail to comply with 37 CFR 1.84 and are "informal"; for example, (i) certain lines and/or reference characters and/or descriptive matter in the figures are of non-uniform thickness, darkness, height, etc. (note e.g. 37 CFR 1.84(I)), and (ii) the numbering of the drawing sheets must appear at the top of each sheet, rather than on the side.

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 10-12, 19-21, 31-33 and 35-37 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10, line 1, "said tag body" lacks antecedent basis.

Claim 11, line 2, "said second edge" lacks antecedent basis.

Claim 19, line 1, "said tag body" lacks antecedent basis.

Claim 31, lines 1-2, "said second edge of said tack retaining body" lacks clear antecedent basis.

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6. Claims 1-24 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 3, it appears that "having" should be --further having-- (or --further including--); note "the linear clamp including..." on line 2.

Claim 1, lines 3-4, "the linear clamp having a slot with a slot length to retain said tack body, and to move in a substantially linear direction" is vaguely worded as to which element (i.e., the linear clamp or the tack body) is undergoing such "move(ment)". It appears that "and to move" would be clearer as --wherein the clamp moves--, or something similar.

Claim 10, line 3, although "said first edge" finds antecedent basis in claim 2, line 2, it appears that --a second edge-- is intended in claim 10 (i.e., the "edges" being referred to in claims 2 and 10 are different "edges", as disclosed--note 532 and 510, respectively, in Fig. 5; also, note "said second edge" in claim 11, discussed in para. 2 above).

Claim 13, lines 2-4, "a first distance between a first end of said jaw open area being less than a second distance between a second end of said jaw open area" is vaguely worded and/or indefinite as there is only a single element (or point of reference) occurring after each instance of "between", rather than two elements (or points of reference) between which a "distance" would be measured. Put another way, it is not seen how "a first end of said jaw open area" (or, likewise, "a second end of said jaw open area") constitutes two elements (or points of reference) between which a "distance" would be defined.

Claim 34 is vaguely worded and/or indefinite for the same reason discussed above with respect to claim 13.

7. Claims 1-15, 17 and 25-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Sayegh et al (US 7084766, eff. date 4/8/02; hereinafter Sayegh et al '766).

NOTE: Sayegh et al '766 is the "patent" equivalent of Sayegh et al publication 2003/0222780, which was relied upon in an Office action dated 1/11/06 and was commented on by applicant in a response filed 6/12/06; the "patent" ('766) equivalent, having the same effective date as the '780 publication, is being used at this time due to the inclusion of an improved set of

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drawings in the patent, thus making the teachings of the reference easier to identify and/or discuss. The teachings of Sayegh et al '780 (now patent '766) have been reconsidered as follows.

As to independent claim 1, note in Sayegh et al '766, security tag 20; tag housing 22,24 (Fig. 1); tack body 52,54 ("shaft" with "indentations", Fig. 3); linear clamp 34 ("attaching member", Figs. 3 and 12A); spring arm 36,43 ("resilient member" or "resilient lever arm", Figs. 3 and 5); abutment 45 ("barrier"); and slot 38 ("opening", Figs. 3 and 12A), inherently having a "slot length", to retain tack body 52,54 (col. 5, lines 19-23). As described at col. 4, lines 61-67 and best shown in Fig. 5, spring arm 36,43 is in direct contact with abutment 45 such that linear clamp 34 is inherently "biased" thereby, which Sayegh et al '766 teaches is so that "an opening 38 defined on said attaching member 34" is maintained in "axial alignment" with an aperture 40 on housing half 24 and with a hole 42 on housing half 22 (see further col. 4, lines 56-60); i.e., linear clamp 34 is inherently "biased" by spring arm 36,43 interacting with abutment 45 in the same sense as the linear clamp 34 is "biased" in an alternate embodiment of Sayegh et al '766 (Fig. 7), where a spring 44 is used in place of the spring arm 36,43. Sayegh et al '766 further teaches that the linear clamp 34 "move(s) in a substantially linear direction along the slot length" as controlled at least by first and second tracks 30,32 (col. 4, lines 44-56; see e.g. Figs. 3 and 5, wherein tracks 30,32 are shown as being parallel with "slot length" 38 and thus control movement of clamp 34 along the same "direction"); such movement is responsive to a "force" to release the tack body (52,54) from the slot (38,78), which "force" is provided by a "probe" 8 (Fig. 11A; see the Abstract and col. 6, lines 4-19).

Further as to independent claim 25, linear clamp 34 comprises a "clamp body" 80,82; spring arm 36,43 (discussed above), shown in Figs. 3, 5 and 12A as being "attached to a first edge (77)" of the clamp body, to bias the linear clamp against one or more abutments (as discussed above); and "tack retaining body" (96,98) having a slot 38 with a "slot length" to retain a tack body (52,54) (as discussed above), and to release the tack body in response to a "force" applied in a substantially linear direction along the "slot length" (as discussed above).

As to claim 2, note the discussion of claim 25 above.

As to claim 3, note first jaw 96 and second jaw 98, with "spaced facing edges" forming slot 38 and a "jaw open area" 78 in the clamp body 80,82 (see e.g. Figs. 3 and 12A, and col. 5, lines 34-35 and 48-52).

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As to claim 4, note "common second edge" 75.

As to claim 5, as generally shown in the figures of Sayegh et al '766 the jaws 96,98 are "integrally formed" with clamp body 80,82.

As to claim 6, note tack body "first portion(s)" 52 and tack body "second portion(s)" 54.

As to claim 7, slot 38 inherently has a width "approximate to said second diameter (of second portion(s) 54)", and jaws 96,98 inherently move between "first" and "second" positions to retain the second portion(s) 54 and accommodate the first portion(s) 52, respectively (col. 5, lines 52-57).

As to claim 8, where linear clamp 34 is of a generally rectangular configuration (see e.g. Figs. 3, 5 and 12A), it is inherent that a "side" of the clamp body 80,82 forms a "first plane", and a "side" of the tack retaining body 96,98 forms a "second plane" substantially parallel to the first plane.

As to claim 9, as best shown in Figs. 3, 5 and 12A of Sayegh et al '766, the configuration of the "spaced facing edges" (associated with jaws 96,98) includes a "substantially parallel" first portion to form slot 38, a curved end of the slot "approximating a curve for said tack body" and the other end of the slot forming a "release section" opening into jaw open area 78.

As to claim 10, note channel 56 (Fig. 11) and detachment probe 8 (Fig. 11A, discussed above), the channel accommodating movement of the probe to contact a second edge 75 of linear clamp 34.

As to claim 11, probe 8 provides the "force" against the second edge 75 to move the clamp 34 in the linear direction dictated at least by tracks 30,32, as discussed above (col. 6, lines 4-19), inherently between first and second positions.

As to claim 12, it is implied that the clamp 34 moves back to the first position (due to the "bias" provided by spring arm 36,43) when the "force" (applied by probe 8) is terminated.

As to claim 13, as best shown in Figs. 3, 5 and 12A of Sayegh et al '766, the configuration of the "spaced facing edges" (associated with jaws 96,98) includes a "straight" second portion to form jaw open area 78.

As to claim 14, tag housing 22,24 of Sayegh et al '766 includes a "top half" 22 and a "bottom half" 24 (Figs. 1-3, etc.), and bottom half 24 has a "guide" (i.e., tracks 30,32 discussed above) to assist movement of the clamp 34 in the linear direction.

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As to claim 15, as shown e.g. in Figs. 3 and 5 the "abutment" 45 (discussed above) is in the bottom half 24 and is inherently "disposed approximately in line with said force".

As to claim 17, see claim 12 above; it is implied that spring arm 36,43 moves from a first to a second position responsive to the "force" (applied by probe 8), and back to the first position when the "force" is terminated.

As to claim 26, note the discussion of claim 3 above.

As to claim 27, note the discussion of claim 4 above.

As to claim 28, note the discussion of claim 5 above.

As to claim 29, note the discussion of claim 8 above.

As to claim 30, note the discussion of claim 9 above.

As to claim 31, note the discussion of claim 11 above; as shown in the figures of Sayegh et al '766, the second edge 75 of linear clamp 34 (discussed above) inherently includes a "second edge of said tack retaining body (96,98)".

As to claim 32, from the figures of Sayegh et al '766 it is apparent that tack body 52,54 will move into the jaw open area 78 when clamp 34 is in the "second (unlocking) position", thereby releasing the tack body 52,54 from tack retaining body 96,98 (col. 6, lines 4-19).

As to claim 33, note the discussion of claim 12 above.

As to claim 34, note the discussion of claim 13 above.

8. Claims 16 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayegh et al '766.

As to claim 16, although Sayegh et al '766 teaches that spring arm 36,43 includes a spring arm body 43 extending along the first edge 77 of the clamp body 80,82, and--inherently, as shown in the figures--a "joint" joining the spring arm body 43 to one end of the clamp body 80,82 (see e.g. Figs. 12A-12C), Sayegh et al '766 fails to teach that the "joint" is a "curved" joint. However, one skilled in the art would have found it obvious to use a "curved" joint to join the spring arm body to the clamp body, based on any preferred design considerations or the particular types of parts available at a given time and place, since the function of the overall device would not be modified thereby; i.e., the substitution of one known element ("curved" joint) for another (e.g., right-angled joint) would have yielded predictable results to one of

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ordinary skill in the art at the time of the invention (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385).

As to claim 35, note the discussion of claim 16 above.

As to claim 36, note the discussion of claim 17 above.

As to claim 37, note the discussion of claim 15 above; in Sayegh et al. '766, spring arm 36,43 is biased at abutment 45, and thus is inherently biased "approximately in line with said force".

9. Claims 38-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 18-24 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and/or the objection(s) under 37 CFR 1.75(a), set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. Applicant's arguments filed 10/2/07 with respect to the Hartings reference have been considered but are moot in view of the new ground(s) of rejection.

11. This Office action is non-final.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Thomas J. Mullen/

Primary Examiner, Art Unit 2612